

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002
(202) 442-9091

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

MULTI-THERAPEUTIC SERVICES, INC.
and BENTLEY HAMILTON
Respondents

Case No.: I-00-40122

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701, *et seq.*) and Title 22, Chapter 35, of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-40122) served August 22, 2000,¹ the Government charged Respondents Multi-Therapeutic Services, Inc. and Bentley Hamilton with violations of 22 DCMR 3521.3 (failure to provide habilitation, training and assistance in accordance with resident’s Individual

¹ The Certificate of Service on the back of the Notice of Infraction (00-40122) certifies that the Government served the Notice of Infraction by mail on August 21, 2000. The date of service listed on the front of the Notice of Infraction, however, is August 22, 2000. So as not to prejudice Respondents’ statutory period in which to answer pursuant to D.C. Code § 6-2712(e), this administrative court will deem the Notice of Infraction as having been served by the Government on August 22, 2000.

Habilitation Plan (“IHP”))², and 22 DCMR 3521.5 (failure to make timely modifications to resident’s program).³

The Notice of Infraction alleges that on August 10, 2000 Respondents violated 22 DCMR 3521.3 as a result of Respondents’ consumer running out of a particular medication (Doxepin HCL 5 mg.)⁴ as of August 6, 2000 according to the consumer’s medication supervision sheet, and violated 22 DCMR 3521.5 because all of Respondents’ consumers’ records did not contain a current quarterly report. The Notice of Infraction also alleges that Respondents violated 22 DCMR 3521.3 and 22 DCMR 3521.5 at 6217 16th Street, N.W., and seeks a fine of \$500.00 for each of the alleged violations. *See* 16 DCMR 3239.2(f). Attached to the Notice of Infraction was an August 16, 2000 Statement of Deficiencies and Plan of Correction (“SDPC”) issued to

² 22 DCMR 3521.3 provides: “Each GHMRP [Group Home For Mentally Retarded Persons] shall provide habilitation, training and assistance to residents in accordance with the resident’s Individual Habilitation Plan.”

³ 22 DCMR 3521.5 provides: “Each GHMRP shall make modifications to the resident’s program at least every six (6) months or when the client: (a) Has successfully completed an objective or objectives identified in the Individual Habilitation Plan; (b) Is regressing or losing skills already gained; (c) Is failing to progress toward identified objectives after reasonable efforts have been made; (d) Is being considered for training toward a new objective or objectives; or (e) As indicated by a change in his or her health status.”

⁴ Doxepin, sometimes offered under the trade name of Sinequan, is an antidepressant with sedative side effects that has been on the market for approximately twenty years. Doxepin is one of a class of psychotherapeutic agents known as dibenzoxepin tricyclic compounds, and is used primarily to treat the following illnesses: (1) psychoneurotic patients with depression and/or anxiety; (2) depression and/or anxiety associated with alcoholism; (3) depression and/or anxiety associated with organic disease; and (4) psychotic depressive disorders with associated anxiety, including involutional depression and manic-depressive disorders. *See Physicians’ Desk Reference* 2407 (53rd ed. 1999); *see also Rodriguez v. Lilienthal*, No. 93-35036, 1993 U.S. App. LEXIS 34109, at *3 n.2 (10th Cir. Dec. 21, 1993); *Pfizer, Inc. v. Heckler*, 735 F.2d 1502, 1504 (D.C. Cir. 1984); *Trach v. Thrift Drug, Inc.*, 46 Pa. D. & C.4th 231, 239 (Pa. Ct. Common Pleas 2000).

Respondents listing deficiencies with respect to three (3) provisions of the DCMR.⁵ The space on the SDPC under the heading “Plan of Correction” was blank.

On September 13, 2000, this administrative court received Respondents’ pleas of Admit with respect to the alleged violation of 22 DCMR 3521.5, and Admit with Explanation with respect to the alleged violation of 22 DCMR 3521.3.⁶ Accompanying Respondents’ pleas was a check (#9219) drawn in the amount of \$1,000.00. The \$1,000.00 payment was applied in satisfaction of Respondents’ admitted violation of 22 DCMR 3521.5, as well as the charge of violating 22 DCMR 3522.11 contained in Notice of Infraction 00-40123.⁷ Accordingly, on September 15, 2000, this administrative court issued a notice closing the matter with respect to 22 DCMR 3521.5, but leaving the charge of 22 DCMR 3521.3 open for adjudication.

⁵ The SDPC listed deficiencies with respect to three provisions of the DCMR: 22 DCMR 3521.3, 22 DCMR 3521.5, and 22 DCMR 3522.11. As discussed above, Notice of Infraction (00-40122) only charges Respondents with violations of 22 DCMR 3521.3 and 22 DCMR 3521.5. It appears that the Government issued a separate Notice of Infraction (00-40123) for Respondents’ alleged violation of 22 DCMR 3522.11 as identified in the SDPC. *See infra* note 7.

⁶ This administrative court interprets *pro se* Respondents’ plea of Admit with Explanation to the charged violation of 22 DCMR 3521.3 as a request for a suspension or reduction in fine in addition to an answer for purposes of D.C. Code § 6-2712(a). *See Bilal v. Kaplan*, 956 F.2d 856, 857 (8th Cir. 1992) (liberally construing pleading filed by *pro se* party); *Baade v. Price*, 175 F.R.D. 403, 404 n.1 (D.D.C. 1997) (same).

⁷ Notice of Infraction (00-40123) charged Respondents with a violation of 22 DCMR 3522.11 with respect to a consumer’s medication box containing expired medication as of August 10, 2000. The Government served the Notice of Infraction (00-40123) on August 22, 2000 and sought a fine of \$500.00 for the alleged violation. *See supra* note 1 regarding discrepancy in service date for Notice of Infraction (00-40122) which also applies to the Government’s service of Notice of Infraction (00-40123). On September 13, 2000, Respondents filed a plea of Admit, and paid the fine in full by check (#9219). This administrative court issued a notice closing the matter on September 15, 2000.

On September 28, 2000 this administrative court received a copy of the Government's List of Documents and Witnesses which was served upon Respondents without objection. Attached to the list were two documents the Government sought to have admitted into evidence at trial: a copy of the Notice of Infraction (00-40122), as well as an August 16, 2000 SDPC. Unlike the SDPC that was served with the original Notice of Infraction, however, this SDPC included responses under the heading "Plan of Correction" that appear to have been provided by Respondents. Regarding the alleged violation of 22 DCMR 3521.3, Respondents asserted the following under the Plan of Correction: "The customer has a complete supply of prescribed medication in his medication box. The medication was administered as ordered however, direct care staff failed to document their administration in the proper form for (5 days). Formal personnel actions are pending in view of this policy infraction."

On October 6, 2000, this administrative court issued an order permitting the Government to respond to Respondents' plea and request within ten (10) calendar days from the date of the order. Because the Government has not submitted a response within the allotted time, this matter is now ripe for adjudication.

II. Summary of Evidence

Respondents have admitted violating 22 DCMR 3521.3 as a result of medication records indicating that Respondents' consumer did not receive his prescribed amount of Doxepin HCL for five (5) days. By way of explanation, Respondents assert that the consumer had received all prescribed medication, but that the staff failed to properly document the administration of that

medication. Respondents state that formal personnel actions are pending against the staff involved, although Respondents do not specify precisely what disciplinary actions have been or will be taken. The Government has not challenged Respondents' assertions.

III. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating 22 DCMR 3521.3 on August 10, 2000.
2. According to the medication supervision sheet, on August 10, 2000 Respondents failed to provide their consumer with the medication Doxepin HCL as prescribed since August 6, 2000.
3. Although Respondents' consumer had, in fact, received Doxepin HCL as prescribed, Respondents failed to properly document the administration of that medication for five (5) days.
4. Respondents have initiated formal personnel actions against their staff relating to the failure to properly document the administration of the consumer's medication. Respondents have not, however, specified precisely what disciplinary actions have been or will be taken.
5. By their plea of Admit with Explanation, Respondents have acknowledged responsibility for violating 22 DCMR 3521.3.

IV. Conclusions of Law

1. Respondents violated 22 DCMR 3521.3 on August 10, 2000.

2. Respondents seek a reduction or suspension of the fine in light of the facts that their consumer received all of his prescribed medication, and that staff who failed to document properly the administration of this medication have been or will be disciplined. Although in the ordinary case, a respondent's acknowledgment of responsibility and subsequent corrective action may support a reduction or suspension of a fine, the nature of the infraction makes this case anything but ordinary. Catastrophic results, including serious injury or death, can result when proper records of the administration of a patient's medication are not maintained – particularly where, as here, powerful anti-depressants such as Doxepin HCL are at issue. *See Physicians' Desk Reference* at 2408 (noting death may occur from overdose of Doxepin, as well as such critical manifestations as: cardiac dysrhythmias, severe hypotension, convulsions, and Central Nervous System depression, including coma); *see also Trach v. Thrift Drug Inc.*, 46 Pa. D. & C. 4th 231, 242 (Pa. Ct. Common Pleas 2000) (identifying possible symptoms such as glaucoma and other irreversible neurological and cognitive side effects as a result of an accidental Doxepin overdose). Moreover, Respondents' back-end attempts to address such a serious lapse through unidentified "formal personnel actions" cannot substitute for adequate staff screening, training and monitoring on the front-end.
3. Accordingly, the \$500.00 fine sought by the Government for Respondents' violation of 22 DCMR 3521.3 will not be reduced or suspended.

Therefore, upon Respondents' answer and plea, their application for reduction or suspension of the fine, and the entire record in this case, it is hereby this _____ day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable for the infraction as charged in the Notice of Infraction, shall cause to be remitted a single payment totaling **FIVE HUNDRED DOLLARS (\$500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permits pursuant to D.C. Code § 6-2713(f).

/s/ **4-9-01**

Mark D. Poindexter
Administrative Judge